IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. Application No. 672 of 2006

1. Dinesh Pratap S/o Angad Prasad
2. Rinku S/o Dinesh Pratap
3. Smt. Keshar Singh W/o Dinesh Pratap
   All R/o 1914 L.D.A. Co,ony
   Kanpur Road, Lucknow (U.P.)
4. Ayush Agrawal
   R/o 48 Ashiyana, Lucknow
5. Ravi Kumar Sharma
   R/o Kitabghar 1918 L.D.C. Colony
   Lucknow .....Applicant

Versus

1. State of Uttaranchal
2. Judicial Magistrate, CBI, Dehradun
3. Micle Anthony S/o B.R. Anthony
   R/o 21 Circular Road, Dalanwala
   Dehradun
4. N. Raj S/o Shri R.P.Singh
   R/o Sahastradhara
   Village & P.S. Rajpur
   District Dehradun .....Respondents

Sri D.S. Mehta, learned counsel for the applicants.
Learned A.G.A. for the State

Hon'ble B.C. Kandal, J.

The petition under section 482 Cr.P.C. has been filed by the petitioners for quashing the impugned order dated 26.09.2005 passed by the Judicial Magistrate, CBI, Dehradun in case No.593/2005 Micle Anthony Vs. Dinesh Pratap & others.

2. Brief facts of the case are that the respondent no. 2 – Micle Anthony filed a complaint before the magistrate against the present applicants under sections 147, 420, 323, 504, 506 IPC. It has alleged that there was a transaction in between the accused and the complainant with regard to the purchase of land at Dehradun. In pursuance of the said oral agreement, a sum of Rs. 20,000/- was given to the accused. Subsequently, it was revealed that the said land did not belong

to the accused persons. On 03.07.2005 when the respondent no. 2 met with the applicants on the disputed land, the respondent no. 2 has stated that he had been cheated by them. On this, the applicants hurled abuses upon the respondent no. 2 and threatened him with the dire consequences. It was further stated in the complaint that the accused persons also committed the *'marpeet'* with the complainant. Thereafter, the police investigated the matter and submitted the chargesheet. The learned magistrate took cognizance against the applicants. Feeling aggrieved by this, the applicants preferred the present petition.

3. It is well settled position of law that the power under section 482 Cr.P.C. to quash the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report, even if taken at their face value and accepted in their entirety, do not prima facie disclose the commission of an offence or where the uncontroverted allegations made in the FIR or complaint and the evidence relied in support of the same do not disclose the commission of any offence against the accused, or the allegations are so absurd and inherently improver that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in proceeding against the accused or where there is an express legal bar engrafted in any provisions of the Cr.P.C. or any other statute to the institution and continuance of the criminal proceedings or where a criminal proceeding is manifestly actuated with mala fide and has bee initiated maliciously with the ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge.

4. It has been held in ***Union of India Vs. Prakash P. Hinduja 2003 SCC (Cri) p/1314*** that Section 482 Cr.P.C. saves inherent powers of the High Court and such a power can be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice. The grounds on which the prosecution initiated the proceedings can also be quashed. The grounds on which power under section 482 of the Code can be exercised to quash the criminal proceedings are : (i) where the allegations made in the FIR or complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, (ii) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused, (iii) where there is an express legal bar engrafted in any of the provisions of the 'Code' or the Act concerned to the institution and continuance of the proceedings. But this power has to be exercised in a rare case and with great circumspection.

5. Perusal of the present complaint itself reveals that the prima facie case is made out against the applicants and the evidence adduced in support of the allegation discloses the commission of offence. So far as the plea of *'alibi'* is concerned, it requires the evidence of both the parties. The plea of '*alibi*' can be raised by the applicants during the trial. This court cannot evaluate the disputed facts of the case. This Court cannot decide as to whether the evidence is reliable or not.

6. It has been held by the Hon'ble Apex Court in ***M. Narayandas Vs. State of Karnataka 2004 Cri.L.J. p/822***

that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inhernent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

7. It has bee held in ***State of Karnatak Vs. M. Devendrappa & another 2002(2) SBR p/151*** that while exercising jurisdiction under section 482 Cr.P.C., the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court.

8. The Hon'ble Apex Court has further observed in another case in ***State of M.P. Vs. Awadh Kishore Gupta and others*** reported in ***SCC (Cri) 2004 p/353*** as follows:-

> *"It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., is not possible for this Court to act as if it is a trial court."*

9. In view of the above, the petition lacks merit and is dismissed. All the pending miscellaneous application(s) in this case, if any, shall stand disposed of accordingly.

(B.C. Kandpal, J)

19.08.2006
ASWAL